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Maine State Panel of Mediators Annual Report, Fiscal Year 2013

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ANNUAL REPORT
PANEL OF MEDIATORS

Fiscal Year 2013

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (Supp. 2012).

The primary function of the Panel of Mediators is to assist bargaining agents, who represent public employees at all levels of government and public education in Maine, and public employers to successfully negotiate initial or successor collective bargaining agreements. Although referred to as the Panel of Mediators, the State mediators do not sit as a panel but work independently from each other on each assigned case. Each mediator provides mediation services, state-wide. Effective mediators resolve disputes by persuading the parties to alter their positions sufficiently to permit agreement, but there are different styles of mediation and different skill sets that come into play in various situations. The acceptability of the mediator to both sides in a given case is essential as mediators have no authority to force parties to make any concession or to agree to any proposal. State mediators also provide in interest mediation pursuant to the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. § 1953, et seq. (2005 and Supp. 2012), and may participate in helping resolve private sector collective bargaining disputes. 26 M.R.S.A. § 891 (2007).

The number of new interest mediation requests received this fiscal year decreased from the total for the preceding two years; there were 46 new requests compared with 69 in FY 2012 and 54 in FY 2011. During the last fifteen years, the number of new interest mediation filings per year ranged from the low of 39 in FY 2009 to a high of 73 filings in FY 2000. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 57 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 40 matters carried over from FY 2012 that required mediation activity during the year. Last year, 37 matters were carried over from FY 2011. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 86, down from 106 during the previous fiscal year.

The lower level of demand for mediation services for the year overall is consistent with the observation reported by several mediators that many parties seemed to be

slowing the negotiations process, resulting in fewer disputes being ripe for mediation, particularly in the second half of the year. For the past four years, we have been reporting that reduced public resources have made it more difficult to negotiate collective bargaining agreements. Subsequent to publication of the major initiatives included in the State budget for the upcoming biennium, several municipal and K-12 education employers credited their difficulty in agreeing to cost items to the uncertainty in the amount of available resources for the next two years. These parties attributed their concern to the proposals in the State budget to suspend State municipal revenue sharing transfers and to transfer funding for the state share of the teacher retirement program to the local school districts. Thirty requests for mediation services were filed in the first half of the fiscal year and only 16 in the second half. In FY 12, there were 32 requests in the first half year and 36 the second half and the distribution in FY 11 was 27 and 27. It appears that parties were waiting for the State budget to be finalized before concluding agreements or moving on to mediation.

Mediation is recorded as a single request, even when it involves multiple bargaining units of a single employer. For example, one filing this year was for 4 units; 3 units were involved in each of two other filings. In total, 99 bargaining units were involved in mediation this year.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1999	73.91%
2000	80.7%
2001	85.94%
2002	76%
2003	83.1%
2004	86.8%
2005	88.5%
2006	77.8%
2007	84.9%
2008	87.5%
2009	72.1%

2010	82.0%
2011	72.6%
2012	63.8%
2013	60.3%

In addition to the funding uncertainties mentioned above, the mediators report that it has been more difficult secure settlements this year because austerity measures and health insurance adjustments previously implemented have resulted in increased resistance to further cost containment proposals. In addition, more philosophical issues have been brought to the bargaining table this year and it is always harder to achieve compromise on issues that parties regard as being matters of principle.

The Panel received a request for services this year pursuant to the Agricultural Marketing and Bargaining Law. These cases involve disputes between the Agricultural Bargaining Council and McCain Foods U.S.A., involving approximately one-half of the Maine potato crop. The parties were unable to reach agreement in mediation; however, they did so prior to the statutory arbitration process.

Several years ago, members of the Panel of Mediators received instruction by the U.S. Department of Labor in interest-based bargaining techniques. Starting in FY 1996, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 65 instances where this problem-solving "preventive mediation" approach has been used, 63 settlements resulted (96.9% settlement rate). Despite this tremendous track record, we received no requests for preventive mediation services this year.

Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. In calculating the settlement rate, only those matters where the mediator was actively involved in the settlement are considered as having been successful. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was

filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last 15 years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Agricultural Marketing Act
1999	69	3	66	0
2000	73	6	67	0
2001	61	6	55	0
2002	54	3	50	1
2003	64	8	55	1
2004	65	2	63	0
2005	55	1	54	0
2006	58	4	53	1
2007	47	4	43	0
2008	40	2	38	0
2009	39	2	37	0
2010	64	3	60	1
2011	54	0	53	1
2012	69	7	62	0
2013	46	1	45	1

The requests for services received in the last three years involved the following employee organizations:

	<u>2013</u>	<u>2012</u>	<u>2011</u>
Maine Education Association/NEA ¹	16	24	23
Teamsters Union Local 340	14	25	11
AFSCME Council 93	7	6	8
Maine Association of Police	7	7	2
International Association of Fire Fighters	2	2	8
American Federation of Teachers	1	1	0
Fraternal Order of Police	1	2	0
International Association of Machinist	1	-	-
Oxford County Deputies Association	1	-	-

¹While reference is made to the Maine Education Association, the Maine Association of Police or International Association of Fire Fighters for the sake of simplicity, the various activities described were undertaken by local associations which are affiliated with each of the larger state-wide or national employee organizations.

Overall, the demand for public sector mediation services decreased by 28.1% this year. Requests in the municipal sector increased by 25.8%; those arising from K-12 education decreased by 33.3%. The reduction in the number of bargaining units, due to the K-12 reorganization initiatives, may have contributed to the greater decrease of mediation requests in that sector.

The average number of mediation days per case increased from 2.38 in FY 2012 to 2.81 for the combined total of 58 matters, including carryovers, for which mediation was concluded. One case was concluded in 13 mediation days, two others required 8 days each, and three required 7 days each. Of the 58 cases in which mediation was concluded this year, 74.1% were resolved in 3 days or less (21 cases were resolved in one day, 12 were resolved in two days and 10 were resolved in three days).

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case
1999	3.46
2000	4.19
2001	3.89
2002	3.86
2003	3.46
2004	4.16
2005	3.89
2006	3.01
2007	5.42
2008	2.65
2009	2.74
2010	4.07
2011	3.38
2012	2.38
2013	2.81

Of the mediations, including carryovers, that were concluded in FY 2013, 12.1% proceeded to fact-finding. The percentage of cases proceeding to requests for fact-finding after mediation in each of the past several years is indicated in the following chart:

Fiscal Year	Percentage of Cases Proceeding to Fact Finding*
1999	30.43%
2000	14.04%
2001	9.375%
2002	20%
2003	13.8% (38.5%)
2004	8.8% (19.11%)
2005	5.8 (25%)
2006	13.9% (20.8%)
2007	12% (26%)
2008	7.5% (17.5%)
2009	7.7% (16.3%)
2010	9.75% (21.9%)
2011	12.9% (19.4%)
2012	17.2% (35.9%)
2013	12.1% (34.5%)

*Prior to FY 2003, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request has been filed and, in many instances, settlement is achieved in mediation before the fact-finding proceeding is ever held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

Assuming the average of 2.81 mediation days per case, the 31 matters still pending will consume an additional 87 mediation days, for a total expenditure of approximately 250 mediation days devoted to matters docketed in or carried over to FY 2013.

Despite their good faith, parties can, and often do, disagree over the meaning and intent of collective bargaining agreement provisions they have negotiated. The resulting

disputes are resolved through the contractual grievance procedure, which usually culminates in final, binding arbitration. In 2001, the Legislature amended 26 M.R.S.A. § 965(2)(F) (2007 & Supp. 2012) to permit members of the Panel to assist parties in resolving grievance disputes, if the parties had so agreed. Parties are invariably more satisfied with results they have negotiated than with those imposed by a third party. Two requests for grievance mediation services were received this year. One case was settled by the parties; in the other, the mediator met with the parties and was unable to mediate a settlement. The use of grievance mediation is a positive development in public sector collective bargaining, helping parties to resolve grievances expeditiously and avoiding the expense and delay inherent in arbitration.

Legislative Developments

Under current law, the State mediators' per diem is \$100 for up to 4 hours of mediation services provided and \$100 for each consecutive period of up to 4 hours thereafter. Labor negotiations occur state-wide and mediators often are required to drive several hours to participate in a mediation session. Mediators are not compensated for travel time beyond receiving mileage at the State rate of \$.44 per mile. While a mediator may be willing to work for statutory rate they are reluctant to spend several hours of uncompensated time travelling to and from the location of a mediation. L.D. 689 sought to address this concern by compensating mediators for travel time. Rather than consider this stop-gap measure, the Legislature adopted a measure, Chapter 26, Resolves 2013, charging the Maine Labor Relations Board with convening a task force, including representatives of the public sector labor- management community and members of the Panel of Mediators, to study the question of mediator compensation and its impact, not only on the recruitment and retention of able labor mediators but also on the public sector bargaining process as a whole, and report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2014, with recommendations and necessary implementing legislation to provide reasonable compensation for the members of the Panel of Mediators.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano	Biddeford
J. Donald Belleville	Lewiston
David Bustin	Hallowell
Maria Fox	Portland

Jane Gilbert
Denis Jean
Robert L. Lyman
Charles A. Morrison
Melissa Shattuck
Don Ziegenbein

Augusta
Lewiston
Freeport
Auburn
Falmouth
Bangor

Mediation continues to be the cornerstone of public sector collective bargaining in Maine. Practitioners in the labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 1st day of July 2013.

Respectfully submitted,

Marc P. Ayotte, Executive Director
Panel of Mediators and
Maine Labor Relations Board